UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	
WILLIAM FELDER,	)	**Case No. 97-05465-b**
	)	**Chapter 13**
Debtor.	)	
	)	
WILLIAM FELDER, Individually and as Representative of a Class of Other Debtors Similarly Situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Adversary No. 98-80146**
	)	
AMERICAN GENERAL FINANCE, INC.,	)	
	)	
Defendant.	)	

Judgment on Order dated July 7, 2000:

Therefore, It is

ORDERED, ADJUDGED AND DECREED, that American General Finance, Inc.'s Cross-motion for Summary Judgment is granted and Mr. Felder's Motion for Summary Judgment is denied. Accordingly, this adversary proceeding is hereby dismissed, with prejudice, as between American Genera; Fiance, Inc. and William Felder. It is

FURTHER ORDERED, ADJUDGED AND DECREED that this Court has reconsidered its Memorandum Opinion and Order certifying a class, entered February 16, 2000. Upon reconsideration, this Court hereby de-certifies the class and vacates the prior Class Certification Order. Thus, this adversary proceeding shall be and hereby is dismissed as between American General Finance, Inc and William Felder.

Wm. Thurmond Bishop
Judge

Columbia, South Carolina

This 7th day of July, 2000.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

BNC'd

JUL 7 2000

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

[redacted] **LISA BAUGHMAN**

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Defendant.	)	

ORDER

This matter comes before the Court on the Motion of the Plaintiff, William Felder (Mr. Felder), for Summary Judgment and the Cross-Motion of the Defendant, American General Finance, Inc. (AGF) for Summary Judgment. In his second Amended Complaint, Mr. Felder alleges that AGF violated the automatic stay of § 362(a)(3), (6) and (7) of the Bankruptcy Code by canceling his credit personal property insurance post-petition and by retaining and applying to his outstanding loan $67.32 of unearned premium that the insurer refunded to AGF. Mr. Felder asserts that these alleged stay violations give rise to a cause of action under § 362(h) because, he alleges, he was injured by the cancellation of his policy and his inability to use the refund of the unearned premium to fund his Chapter 13 plan. Mr. Felder further claims that the record establishes, as a matter of law, the liability of AGF under

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§ 362(h) and his right to recover compensatory damages, punitive damages, and attorney's fees on behalf of himself and a class of Chapter 13 debtors alleged to be similarly situated.

AGF contends that if the act of attempting to cancel Mr. Felder's credit insurance violated the automatic stay, the cancellation was void *ab initio* and the credit insurance therefore remained in place for its full term. AGF further asserts that because it did not send Mr. Felder notice of the attempted cancellation of the credit insurance, the attempted cancellation never became effective under applicable South Carolina insurance law. AGF also points out that Mr. Felder admits that he did not incur any claim that was not covered by insurance due to the cancellation. Under these scenarios, AGF contends that Mr. Felder has not been injured and therefore has no claim under § 362(h). Thus, AGF contends it is entitled to summary judgment dismissing the Complaint due to a lack of evidence on this necessary element of a claim under § 362(h).

AGF also contends that it had a perfected security interest in the unearned premium refund by virtue of a pre-petition assignment of the unearned premium to AGF by Mr. Felder. AGF further contends that because Mr. Felder was in default pre-petition by being two payments in arrears on his debt to AGF, it had the right under the assignment to cancel the credit insurance and apply the unearned premium to the debt. Thus, even assuming that the post-petition acts of attempting to cancel Mr. Felder's insurance and applying the refund to his debt to AGF are stay violations, AGF asserts Mr. Felder suffered no injury from those acts because neither he nor any of his creditors could ever have recovered the unearned premium due to AGF's perfected security interest in it. Therefore, AGF asserts again that Mr. Felder cannot establish that he was injured under § 362(h).

Finally, AGF also contends that, as a matter of law, it did not violate the automatic stay in retaining the premium refund and applying it to Mr. Felder's account on the grounds

that the premium refund was not property of Mr. Felder or his estate. AGF's argument is that, because at the time of his bankruptcy filing Mr. Felder owed more to AGF than the amount of the unearned premium that was the subject of a valid assignment to AGF pre-petition, neither Mr. Felder nor his creditors has any claim to those funds. AGF further asserts that the act of applying the refund to Mr. Felder's account constituted recoupment, which is not subject to the automatic stay.

In defense to AGF's cross motion for summary judgment and in his motion for summary judgment, Mr. Felder, among other assertions, contends that he was not in default pre-petition or post-petition as state law required AGF to notify him of his right to cure before it could proceed with any right to the unearned premium under the security agreement. Because this notice was not given, Mr. Felder is of the belief that he was never in default.[1] Mr. Felder also contends that the strict requirements for recoupment have not been met and as a result, this doctrine is not applicable.

After these motions were taken under advisement, Mr. Felder sought and obtained Court permission to submit a supplemental memorandum regarding an additional argument which related to the security agreement. He contends that there is no valid assignment of the unearned premium to AGF as the assignment in the security agreement relates only to creditor placed (force placed) physical damage insurance which is not applicable or relevant here.

AGF was afforded additional time to submit a response which it did by memorandum. AGF contends that Mr. Felder's position is wrong; that the assignment relates to insurance other than force placed physical damage insurance and the insurance in question is not this type but rather credit personal property insurance.

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[1] *See* S.C. Code Ann. § 37-5-111 (Law. Co-op. 1976 & Suppl. 1999).

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Having considered the memoranda, the affidavits and exhibits filed by both parties, and the arguments of counsel, this Court renders the following findings of fact and conclusions of law on the parties' respective motions for summary judgment:

I. Findings of Fact

The facts essential to this Court's disposition of the parties' summary judgment motions are not in dispute. From the record, this Court finds the following facts to be undisputed:

A. The Parties

1. William Felder, a Chapter 13 debtor, filed this adversary proceeding against AGF on his own behalf and on behalf of a class of persons alleged to be similarly situated. Although the Court has certified a class of Chapter 13 debtors in this adversary proceeding, the facts relating to the absent class members have not been made part of the record on Mr. Felder's Motion for Summary Judgment. Thus, this Court will consider only Mr. Felder's claim on the record presented. Depending upon this Court's determination of Mr. Felder's claim, this Court will consider whether reconsideration of the Class Certification Order is appropriate or whether to proceed with consideration of the circumstances of the absent class members.

2. AGF is a South Carolina corporation engaged in the business of consumer lending. AGF also sells several insurance products to borrowers through licensed AGF employees. These insurance products include credit personal property insurance, among other credit and non-credit types of insurance. Affidavit of Brenda Harrell, Director of Operations of AGF (Harrell Aff.) ¶¶ 2-4.

B. Mr. Felder's $1,533 Loan from AGF and Purchase of Credit Property Insurance

3. On November 18, 1996, AGF entered into a secured financing transaction with Mr. Felder whereby AGF loaned Mr. Felder a total of $1,533 to be re-paid to AGF, with interest, over two years. In exchange, Mr. Felder executed and delivered to AGF a promissory note in that amount and a security agreement, which granted AGF a security interest in several items of tangible personal property owned by Mr. Felder that he selected, among other security. Harrell Aff. ¶ 8 and Exhibits A, B and C thereto.

4. As part of this loan transaction, Mr. Felder elected to acquire credit personal *property insurance covering the personal property securing the loan against loss or damage* (the Credit Insurance). Harrell Aff. ¶ 9 and Exhibit A thereto. Mr. Felder acquired the Credit Insurance through AGF's Master Insurance Policy placed with Standard Guaranty Insurance Company (the Insurer). Harrell Aff. ¶ 9. AGF issued Mr. Felder a certificate of insurance under this Master Insurance Policy and notified the Insurer that it had done so. Harrell Aff. ¶ 9.

5. Both the Master Insurance Policy and the certificate of insurance issued to Mr. Felder thereunder limited the insurance coverage to "property used with or incidental to the occupancy of a residence . . . in which [AGF] has an insurable interest by reason of a lien held by [AGF] thereon to secure the payment of a debt." Exhibit F to Harrell Aff. at 2; Exhibit G to Harrell Aff. at 1.

6. The insurance policy at issue in this case is a policy of credit insurance. Credit insurance differs from traditional insurance in that the availability of coverage under a credit insurance policy depends upon the existence of a debt, and the benefit provided by the insurance is payable directly to the creditor in full or partial payment of the debt. In the Credit Insurance Mr. Felder obtained through AGF, there is an additional requirement that AGF have an insurable interest by reason of a lien on property of the debtor for coverage to

apply.

7. The amount financed by AGF for Mr. Felder in this 1996 loan included an advance by AGF of $105.00 to pay the premium for the Credit Insurance. Harrell Aff. ¶ 10 and Exhibit A thereto. AGF paid the premium directly to the Insurer on Mr. Felder's behalf, thereby paying up front the full premium for the entire term of the Credit Insurance, which was until December 1, 1998, the date by which Mr. Felder's promissory note was to be paid in full. Harrell Aff. ¶ 10.

C. Mr. Felder's Assignment of His Rights in Any Unearned Premium Refund Under the Insurance

8. In addition to granting AGF a security interest in select items of his tangible personal property, Mr. Felder also assigned to AGF certain of his rights in the Credit Insurance to secure repayment of the loan. Specifically, the Security Agreement provides as follows:

> Mortgagors, where authorized by law *hereby assign to the Mortgagee* any monies not in excess of the unpaid balance of indebtedness which this instrument secures which may become payable under such other insurance including *return on unearned premiums*, and directs any insurance company to make payment directly to Mortgagee to be applied to said unpaid indebtedness and hereby appoints Mortgagee as attorney-in-fact to endorse any draft. In the event of default under the terms of this instrument, Mortgagee is authorized to cancel said insurance and credit any premium refund received against such unpaid indebtedness.

Security Agreement, Exhibit C to Harrell Aff. (emphasis added).

9. Mr. Felder's Credit Insurance expressly was made subject to the terms of the Master Insurance Policy between AGF and the Insurer. The Master Insurance Policy provided that upon policy cancellation, any "[u]nearned premium will be refunded to [AGF] and applied to [Mr. Felder's] indebtedness to [AGF]." Master Policy, Exhibit F to Harrell Aff. at 4; Certificate of Insurance, Exhibit G to Harrell Aff.

D. Mr. Felder's Pre-Petition Default

10. Under the terms of the Note, Mr. Felder was required to make monthly installment payments to AGF of $90.51 on the first day of every month until the Note was paid in full. *See* Exhibit A to Harrell Aff. at 1. Also according to the terms of the Note, a failure by Mr. Felder to pay an installment within 10 days of its due date would result in a default charge. Exhibit A to Harrell Aff. at 1 (paragraph entitled "Deferment Charges"). The Note specifically provided that AGF need not give Mr. Felder any notice of his failure to pay the Note in accordance with its terms in order for AGF to enforce its rights under the Note. Exhibit A to Harrell Aff. at 2 (paragraph entitled "Delay in Enforcement"). Similarly, the terms of the Security Agreement relating to the Note did not require that AGF provide Mr. Felder with any notice of default before AGF exercised its right to cancel Mr. Felder's personal property insurance and credit any premium refund against Mr. Felder's account.[2] Exhibit C to Harrell Aff.

11. Mr. Felder's last payment to AGF on the Note was made on April 4, 1997. Supplemental Affidavit of Brenda Harrell, (Suppl. Harrell Aff.), ¶ 4 and Exhibit 3 attached thereto. Mr. Felder subsequently filed his Chapter 13 bankruptcy petition on June 30, 1997. As of that date, Mr. Felder had not made any portion of the payment that had become due under the Note on May 1, 1997, and thus, he was 60 days in arrears for that scheduled payment. Also as of the date of his bankruptcy petition, Mr. Felder had not made any portion of the payment that had become due under the Note on June 1, 1997, and thus he was 30 days in arrears for that scheduled payment. *See* Suppl. Harrell Aff., ¶ 4 and Exhibit 3

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[2]Counsel for Mr. Felder has argued, without evidence in the record supporting the claim, that AGF has accepted late payments in the past without exercising its rights upon default. The Note, however, expressly provides that "We may accept late payments . . . without losing any of our rights under this Note." Note at p.2, "Delay in Enforcement," Exhibit 1-A to AGF's Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment, etc., filed August 24, 1999.

thereto. Accordingly, as of June 30, 1997, Mr. Felder was in default on his payment obligations under the Note.

E. Mr. Felder's Chapter 13 Bankruptcy

12. On June 30, 1997, Mr. Felder filed his bankruptcy petition. In Schedule C, Mr. Felder claimed exemptions in certain of the specific items of tangible personal property securing the amounts he owed AGF under the promissory note. Schedule C, AGF's Exhibit 3. Mr. Felder's Chapter 13 Plan, after five modifications, was confirmed by this Court on December 24, 1997. The Fifth Amended Plan specifically avoided AGF's lien in the personal property securing Mr. Felder's debt to AGF to the extent Mr. Felder had claimed that property as exempt pursuant to Bankruptcy Code § 522(f). Fifth Amended Plan, AGF's Exhibit 4, at 1, 4. AGF did not object to Mr. Felder's Chapter 13 Plan.

13. Mr. Felder indicated in his Schedules that he did not have an interest in any insurance policies. Schedule B, AGF's Exhibit 5, item 9 (Interests in insurance policies. None). Similarly, Mr. Felder did not list in his Schedules any interest in unearned insurance premium refunds. Mr. Felder also did not seek to exempt an interest in any insurance policies or to avoid, under § 522 or otherwise, AGF's security interest in the Credit Insurance or the unearned premium.

F. AGF's Proof of Claim and Charge-Off

14. AGF filed a proof of claim in Mr. Felder's bankruptcy indicating a secured claim in the amount of $1,410.46. Harrell Aff. ¶ 11 and Exhibit H thereto. This amount constituted Mr. Felder's remaining indebtedness to AGF on his loan, which was net of the unearned premium refund that would have been due if Mr. Felder's loan had been paid off on the date the claim was calculated. Harrell Aff. ¶ 11. No party objected to AGF's proof of claim.

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15. AGF internally charged off Mr. Felder's entire loan account balance post-petition. Harrell Aff. ¶ 11. As a result of the charge-off of the loan, AGF notified the Insurer that it intended to cancel the Credit Insurance. Harrell Aff. ¶ 12.

16. *At the time of AGF's notice to the Insurer, $67.32 of the premium for the* Credit Insurance had not been earned by the Insurer based upon the number of months remaining in the coverage period. Harrell Aff. ¶ 12. This amount was refunded to AGF pursuant to the terms of the Master Insurance Policy. Harrell Aff. ¶ 13.

17. On August 7, 1997, AGF applied the $67.32 premium refund to reduce the amount due and owing on Mr. Felder's loan, as contemplated by the Security Agreement and the Master Insurance Policy.

18. AGF did not send any prior written notice to Mr. Felder of its intention to cancel the Credit Insurance.

II. Conclusions of Law

A. The Rule 56 Standard and the Requisite Prima Facie Case

Summary judgment should be granted when, considered in the light most favorable to the opposing party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *see also* Bankruptcy Rule 7056(c). Summary judgment is no longer regarded as a disfavored procedural shortcut; rather, it is a salutary method of disposition "to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (internal quotations omitted).

Once the movant has made the required showing, the burden shifts to the non-moving party to show that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). The non-moving party cannot rest on his

pleading or merely show that there is "some metaphysical doubt as to the material facts;" rather, the non-moving party must come forward with specific facts showing that there is an issue for trial. *Id.* at 586-87; *see also Celotex Corp.*, 477 U.S. at 324; *Anderson*, 477 U.S. at 248.

B. 11 U.S.C. § 362(h) - Willful Violation of the Automatic Stay

The sole cause of action stated in Mr. Felder's Complaint against AGF is based upon 11 U.S.C. § 362(h). That section provides as follows:

> An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362(h).

To state a cause of action for damages under § 362(h), Mr. Felder must establish three elements: (1) a violation of the automatic stay, (2) the violation must have been committed willfully, and (3) the violation must have injured the individual seeking damages. 11 U.S.C. § 362(h); *see In re Aiello*, 231 B.R. 693, 707-08 (Bankr. N.D. Ill. 1999); *In re Adams*, 212 B.R. 703, 709 (Bankr. D. Mass. 1997); *In re Freunscht*, 53 B.R. 110, 113 (Bankr. D. Vt. 1985).

"Actual damage is a statutory element of this cause of action under subsection (h). It is not just a mathematical question to be resolved after liability has been found." *In re Aiello*, 231 B.R. at 712. Moreover, the moving party bears the burden of proof in order to prevail on a § 362(h) claim and must prove his case by clear and convincing evidence. *In re Clarkson*, 168 B.R. 93, 95 (Bankr. D.S.C. 1994); *Brockington v. Citizens and Southern Nat'l Bank of S.C. (In re Brockington)*, 129 B.R. 68, 70 (Bankr. D.S.C. 1991).

Even if a defendant's actions violate the automatic stay, an individual debtor does not

have a claim under § 362(h) if the stay violation does not result in any injury to the debtor. *See In re Clarkson*, 168 B.R. at 95 (denying debtor's § 362(h) claim, despite having found that a willful violation of stay had occurred, where debtor had not proved damages); *see also In re Adams*, 212 B.R. at 712; *In re Anderberg-Lund Printing Co.*, 1994 Bankr. LEXIS 1907 (Bankr. D. Minn. 1994) (denying debtor's claim for damages under § 362(h) arising from demand of creditor for unearned premium because debtor failed to establish injury).

This Court finds that the post-petition cancellation of Mr. Felder's insurance policy is a violation of § 362(a) because the insurance policy was property of the estate. *See Minoco Group of Cos., Inc.*, 799 F.2d 517 (9th Cir. 1986); *A. H. Robins Co. v. Piccinia*, 788 F.2d 994 (4th Cir. 1986); *Bell v. Sanford - Corbitt - Bruker, Inc.*, No. CV186-201 1987 WL 60286 (S.D. Ga. Sept. 14, 1987). This Court also finds this violation to be willful because there is evidence in the record that AGF had notice of Mr. Felder's bankruptcy prior to cancelling his insurance. However, for the following reasons, this Court finds that Mr. Felder has failed to establish an injury as a result of this willful violation.

1. Acts in violation of § 362(a) are void *ab initio*.

Contrary to the contentions of both AGF and Mr. Felder, it appears to this Court that the Fourth Circuit Court of Appeals has not ruled whether acts, in general, taken in violation of the automatic stay are void or voidable. No such determination was made in *Savers Fed. Sav. & Loan Assoc. v. McCarthy Constr. Co. (In re Knightsbridge Development Co.)*, 884 F.2d 145, 148 (4th Cir. 1989) cited by AGF or in *Winters v. George Mason Bank*, 94 F.3d 130, 136 n.5 (4th Cir. 1996) cited by Mr. Felder. In fact, the court in *Winters* states as follows: "Mrs. Winters invites this court to decide, *for the first time*, whether it will follow those circuits who find the automatic stay renders actions void, or those circuits who find the automatic stay renders an action merely voidable . . . This court declines to address this

issue." *Winters*, 94 F.3d at 136 (emphasis added). There appears to be an almost equal split in the circuits on this issue. Therefore, in the continued absence of a Fourth Circuit ruling, this Court may make its own determination.

This Court has previously decided, and continues to rule, that "[a]ctions by creditors to collect a debt from the debtor, which are taken after the filing of a bankruptcy petition, are void *ab initio* and of no legal effect." *In re Clarkson*, 168 B.R. at 94 (post-petition foreclosure sale void); *see also Harrell v. Pineland Plantation, Ltd.*, 914 F.Supp. 119 (D.S.C. 1996) (post-petition service of summons and complaint "null and void"); *McWhorter v. South Carolina Nat'l Bank*, 37 B.R. 742, 745 (Bankr. D.S.C. 1984) (post-petition setoff "void and without effect"); *Presidential Row, Inc. v. Citizens Savings Bank*, 37 B.R. 1, 2 (Bankr. D.S.C. 1983) (post-petition foreclosure sale "null and void").

This Court is persuaded by the application of this principle in *Scrima v. The John Devries Agency, Inc.*, 103 B.R. 128, 132 (W.D. Mich. 1989). In *Scrima*, the Court considered the effect of an insurer's post-petition cancellation of a debtor's insurance policy. Upon receiving a notice of cancellation from the insurer, the debtor immediately obtained insurance having a lower coverage limit through another insurer. The debtor later received a refund from the first insurer for the unearned premium. Then, the debtor suffered a loss that exceeded the limits of the new policy and sought coverage under the original policy that had been cancelled. The court found that cancellation of the insurance policy violated the automatic stay. *Id.* As a result, the court held that the cancellation was void *ab initio*, the insurance policy was still valid, and the policy's coverage was still in effect at the time of the debtor's loss. *Id.* at 132-33. As the *Scrima* court pointed out,

> The law of the automatic stay applies in a straightforward manner. Since [the insurer] canceled [the insured's] policy after he had filed for bankruptcy, [the insurer's] cancellation was void *ab initio*. Since [the insurer's] cancellation

was void, the insurance policy was still valid.

Id. at 132.

The *Scrima* court further explained,

> Outside of bankruptcy and apart from the automatic stay, [the insurer's] cancellation presumably would have been effective. . . . However, inside bankruptcy and under the protection of the automatic stay, [the insurer's] cancellation was void. *Since [the insurer's] cancellation was void, [the* insurer's] coverage was still in effect.

Id. at 133.

Accordingly, even though AGF's cancellation of Mr. Felder's Credit Insurance was an act in violation of § 362(a), it was a void act. Following the reasoning of the *Scrima* court, if Mr. Felder had suffered a casualty loss during the original coverage period, he would have been insured despite AGF's cancellation of his policy. Therefore, Mr. Felder has no claim to any refund of unearned premium because, theoretically, the premium was fully earned by the Insurer, and Mr. Felder cannot establish any injury resulting from the cancellation or lack of access to the refund.

2. Cancellation of the Credit Insurance was Ineffective under South Carolina Law.

It is undisputed that AGF did not notify Mr. Felder of its intention to cancel the Credit Insurance. Pursuant to South Carolina law, any attempt by AGF to cancel the Credit Insurance without such notice to Mr. Felder was ineffective. South Carolina Consumer Protection Code § 37-4-304 governs cancellation of a debtor's insurance policy and expressly provides as follows:

> A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, *and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him.* The notice shall state that the policy may be canceled on a date not less than ten days after

> the notice is delivered, or, if the notice is mailed, not less than thirteen days after it is mailed.

S.C. Code Ann. § 37-4-304 (Law. Co-op. 1976 & Revised 1989) (emphasis added). Thus, under this statute, delivery or mailing of the statutory notice of cancellation to the debtor *is a condition precedent* to effective cancellation of an insurance policy by a creditor.

Because the plain language of § 37-4-304 provides that cancellation "does not take effect until" the written notice described in that statute is delivered or mailed to the debtor, and because it is undisputed here that AGF did not provide any written notice of cancellation to Mr. Felder, in theory, the Credit Insurance remained in full force and effect until the end of its coverage term. S.C. Code Ann. § 37-4-304. *Cf. Edens v. South Carolina Farm Bureau Mut. Ins. Co.*, 308 S.E.2d 670 (S.C. 1983) (where policy provided that insurer may cancel insurance "by giving to the insured a five days' written notice of cancellation," cancellation was ineffective absent proof that insured actually received written notice); *Middleton v. United States Fidelity and Guar. Co.*, 253 S.E.2d 505 (S.C. 1979) (notice of cancellation that did not strictly conform to policy provisions held insufficient to accomplish effective cancellation).

Interpreting similar statutes, courts have held that where the required notice of cancellation either was not provided to the debtor or was provided in a deficient manner, the insurance never was effectively cancelled. The insurer remained liable for payment of any covered losses. *See, e.g., Kende Leasing Corp. v. A.I. Credit Corp.*, 524 A.2d 1306, 1309-13 (N.J. Super. Ct. App. Div. 1987) (dismissing insured's claim against premium finance company for its failure to send statutory notice of intent to cancel insurance, and declaring that insurance remained in full force and effect); *Carroll v. State Farm Mut. Auto. Ins. Co.*, 419 So. 2d 57, 58-59 (La. App. 1982) (insurance policy remained in effect where notice of cancellation sent by premium finance company to debtor and copied to insurer did not strictly

comply with statutory requirements to effectively cancel policy); *Home Mut. Ins. Co. v. Broadway Bank & Trust Co.*, 428 N.E.2d 842, 843-44 (1981) (same); *Garber v. American Mut. Fire Ins. Co.*, 206 S.E.2d 86, 87-88 (Ga. App. 1974) (policy remained in full force and effect where creditor made written request to insurer to cancel policy due to debtor's default but did not provide any notice of cancellation to debtor).

Thus, under South Carolina law, any attempt by a creditor to cancel a debtor's insurance without providing written notice of cancellation to the debtor is ineffective. AGF, therefore, never effectively cancelled Mr. Felder's Credit Insurance, and Mr. Felder was not injured by AGF's actions. It follows that Mr. Felder has no claim under § 362(h).

3. Even if the Credit Insurance Had Been Effectively Canceled, Mr. Felder Suffered No Injury.

Whether Mr. Felder's Credit Insurance effectively was canceled post-petition or not, he simply has no cognizable injury. Mr. Felder's Credit Insurance, if not earlier terminated, would have terminated in any event no later than December 1, 1998, the date the final payment on Mr. Felder's loan originally was due. Mr. Felder admits that he did not have any personal property casualty losses during that period that went unpaid due to the cancellation of the Credit Insurance. *See* Answer to Request for Admission No. 16, AGF's Exhibit 7. The Court, therefore, is not left to mere speculation as to whether Mr. Felder theoretically could have suffered injury before the Credit Insurance term ended because the full term already has ended. *See In re Adams*, 212 B.R. at 712 ("ethereal damages" insufficient to establish claim under § 362(h)).

Moreover, Mr. Felder also did not suffer any damages either as a result of any premiums paid in an attempt to obtain another policy or as a result of any emotional damages due to lack of insurance coverage on his personal property. Indeed, it is undisputed that Mr.

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Felder did not even know that the Credit Insurance was canceled. *Cf. In re Aiello*, 231 B.R. at 709 n.8 (suggesting that even emotional distress unaccompanied by out-of-pocket monetary loss does not satisfy the "actual damages" element of a claim under § 362(h)). Thus, Mr. Felder has not offered any evidence of actual injury, and there is no possibility that Mr. Felder could suffer any injury in the future as a result of the events complained of in the Complaint.

The only case cited by Mr. Felder to support his theory that § 362(h) provides him relief for the cancellation of his Credit Insurance does not answer the question presented here. In *Bell v. Sanford - Corbitt - Bruker, Inc.*, 1987 U.S. Dist. LEXIS 8777 (S.D. Ga. 1987), an insurance agency had financed the premiums for an automobile insurance policy for the debtor, who had been an employee of the agency. After the debtor's employment was terminated post-petition, the agency canceled the debtor's insurance and applied the premium refund to reduce her debt to the agency for the premium. The court in *Bell* found that the debtor had suffered only *de minimis* injury, and denied recovery of punitive damages and attorney's fees. Nevertheless, the court directed the agency to return the unearned premium to the debtor.

Importantly, the *Bell* case did not involve credit insurance, and there is nothing in the opinion to suggest that the unearned premium in that case had been assigned to the agency by the debtor pre-petition. Unlike the debtor in *Bell*, prior to filing his Chapter 13 petition, Mr. Felder assigned to AGF all of his rights in "any monies not in excess of the unpaid balance of the indebtedness which [the Security Agreement] secures which may become payable under such other insurance including return on unearned premiums...."

The Credit Insurance was a "dual interest" policy. This simply means that both AGF and Mr. Felder had certain rights thereunder to enforce the provisions of the Credit Insurance.

Through the assignment contained in the Security Agreement, however, Mr. Felder assigned certain of his rights to AGF, including any return on unearned premium and the right to receive any proceeds of the Credit Insurance. Thus, while there are "dual interests" in the Credit Insurance, the assignment affects the extent of the respective interests held by AGF and Mr. Felder.

This Court is of the belief that there is a valid assignment of the unearned premium and concludes that the assignment language in the security agreement does not relate to physical damage force placed insurance as Mr. Felder contends but rather to credit personal property insurance, the type Mr. Felder had. This conclusion is drawn from the plain language of the security agreement itself as physical damage insurance and force placed insurance relating to physical damage are referred to as "such" insurance and the language in the assignment paragraph refers to "such other" insurance. This distinction serves to eliminate force placed insurance as the subject of the assignment. The paragraph preceding the *assignment reads as follows:*

> The property described herein shall be at the Mortgagor's risk and Mortgagor shall procure and maintain for the term hereof insurance against all physical damage risks at Mortgagor's expense all in such form and for such amount as Mortgagee may legally require, the proceeds thereof to be payable to the Mortgagor and Mortgagee as their interests shall appear. In the event Mortgagor does not secure or maintain *such* insurance as Mortgagee may legally require to be in effect for the term hereof, the Mortgagee may declare this instrument in default or as creditor of the Mortgagor may purchase *such* insurance effective from the beginning of the term hereof and at any time, and from time to time thereafter, although nothing herein contained shall impose upon Mortgagee the duty so to do and Mortgagee may add the cost thereof to Mortgagor's indebtedness secured by this instrument; and the Mortgagor agrees to reimburse the Mortgagee for the actual cost of *such* insurance to the extent the same is not included in Mortgagor's indebtedness owing to Mortgagee, the amount of such reimbursement together with interest thereon at an annual percentage rate equivalent to that charged on Mortgagor's indebtedness to constitute an additional obligation of the Mortgagor hereunder and to be paid in equal installments over the term of the insurance. Nothing contained herein shall be construed to require you to obtain or maintain insurance on household

goods.

"[S]uch insurance" is, therefore, force placed physical damage insurance and the assignment was not of force placed insurance but other insurance, namely credit personal property insurance.

AGF's security interest[3] in the unearned premium refund automatically was perfected *under South Carolina law. No UCC-1 filing was necessary to perfect AGF's security interest* because the transaction is excluded from the scope of Article 9 of the Uniform Commercial Code by Section 9-104(g). *See* S.C. Code Ann. § 36-9-104 (Law. Co-op. 1976).

AGF's security interest in the unearned premium was not avoided by Mr. Felder in his Chapter 13 bankruptcy. In his Chapter 13 plan, Mr. Felder sought to avoid AGF's lien on certain items of his personal property to the extent the lien impaired his exemptions, pursuant to § 522(f).[4] Because Mr. Felder did not exempt any interest in insurance policies, he did not avoid (nor could he have avoided)[5] AGF's lien rights in any unearned premium.

Mr. Felder never objected to AGF's assertion that it had a secured claim or provided AGF with notice of any objection to that claim. AGF's claim was an allowed secured claim

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[3]An assignment of an interest for security is a "security interest." S.C. Code Ann § 36-1-201(37) (Law. Co-op. 1976). In addition to the voluntary lien recognized in the U.C.C., under South Carolina law, AGF obtained a statutory lien "equal to the amount of the unpaid balance and service charges upon any unearned premium on the policy held by the insurer and subject to refund by the insurer under the policy" simply by virtue of having financed the insurance premium. S.C. Code Ann. § 38-43-410 (Law. Co-op. 1976 & Suppl. 1999).

[4]The Credit Insurance only provided coverage for "personal property," as defined in the Certificate of Insurance (*i.e.*, "property used with or incidental to the occupancy of a residence"), "on which [AGF] has an insurable interest by reason of a lien held by [AGF] thereon to secure the payment of a debt." *See* Exhibit G to Harrell Aff. at 1. Thus, to the extent that Mr. Felder avoided AGF's liens in his personal property that served as collateral for the debt to AGF, the coverage *provided by the Credit Insurance was lost. Accordingly, Mr. Felder could suffer no* injury from the cancellation of Credit Insurance that provided no coverage due to Mr. Felder's own actions to avoid liens on the covered collateral.

[5]Mr. Felder could not have avoided AGF's lien in the insurance proceeds or the unearned premium refund even if he had claimed an exemption in them because § 522(f) permits the avoidance of a nonpossessory, nonpurchase-money security interest only in the limited tangible items of personal property listed in § 522(f)(1)(B).

except to the extent that AGF's lien was avoided pursuant to § 522(f). 11 U.S.C. §§ 502(a), 506(d); Fed. R. Bankr. P. 3007.

Nor did Mr. Felder notify AGF, through the Fifth Amended Plan or otherwise, that he would seek to establish that AGF's secured claim was worthless pursuant to § 506(a). Rather, the Fifth Amended Plan merely notified AGF that the Plan proposed to avoid its lien under § 522(f) to the extent the lien impaired Mr. Felder's exemptions. Fifth Amended Plan, AGF's Exhibit 4. The notice specifically provides, "[i]f the debtor intends to avoid a security interest *pursuant to other applicable sections of the Bankruptcy Code, then the debtor shall so state* below and shall file and serve the necessary pleadings on or before the date set for the initial meeting of creditors." Fifth Amended Plan, AGF's Exhibit 4, at 4. Mr. Felder never provided such notice and thus has not avoided the remainder of AGF's lien. *See Keene v. Charles*, 222 B.R. 511, 514 (E.D. Va. 1998) (notice in Chapter 13 plan that creditor's secured claim was being reclassified as unsecured claim was insufficient to avoid lien upon confirmation of plan because notice failed to inform creditor specifically that a § 506(a) valuation would be held with respect to that claim).

According to established Fourth Circuit precedent, in order for a debtor to modify a creditor's lien in any affirmative way, regardless of whether the lien is in real or personal property, the debtor must file a pre-confirmation adversary proceeding, file an objection to the secured proof of claim, seek a valuation hearing pursuant to § 506, or take some other affirmative steps in order to satisfy the due process requirement of clearly notifying the secured creditor that the debtor intends to modify the lien in some way. *In re Deutchman*, 1999 WL 734697 *2-*3 (4th Cir.); *see also Cen-Pen Corp. v. Hanson*, 58 F.3d 89 (4th Cir. 1995) (confirmation of Chapter 13 plan that treated secured claim as unsecured did not eliminate secured creditor's lien despite notice to and lack of objection by secured creditor as

to plan); *In re Linkous*, 1993 U.S. App. LEXIS 38180, *9 (4th Cir.) (where creditor's claims were secured by a mobile home and an automobile, respectively, and debtor had not specifically notified creditor that it intended to value those secured claims under § 506, court vacated the portion of debtor's confirmed Chapter 13 plan purporting to treat those claims as only partially secured). Thus, "even where confirmed without objection, a plan will not eliminate a lien simply by failing or refusing to acknowledge it or by calling the creditor unsecured." *Deutchman*, 1999 WL 734697 at *3 (quoting *Cen-Pen*, 58 F.3d at 94).

Mr. Felder made no provision in his Chapter 13 plan for the unavoided lien of AGF on any unearned premium. While AGF's personal claim against Mr. Felder thus may have been discharged by the confirmation of the Fifth Amended Plan, AGF's unavoided *in rem* rights passed through Mr. Felder's bankruptcy unaffected. *See In re Willis*, 199 B.R. 153, 154 (Bankr. W.D. Ky. 1995) ("It is firmly established that a lien 'rides through' bankruptcy unaffected, unless the lien is disallowed or avoided." (citing *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991), among other cases)).

Having a perfected lien in the premium refund that never was avoided, there is no question that if AGF had sought relief from stay to cancel the policy and to collect the unearned premium, AGF would probably have been entitled to that relief or, at a minimum, to adequate protection for the declining value of the unearned premium over the life of the insurance policy. 11 U.S.C. § 362(d)(1); *see also In re Universal Motor Express, Inc.*, 72 B.R. 208, 210 (Bankr. W.D.N.C. 1987). *Cf. United States v. Ruff (In re Rush-Hampton Industries, Inc.)*, 98 F.3d 614, 617 (11th Cir. 1996) (an otherwise harmless violation of automatic stay cannot deprive creditor of entitlement to relief to which it undoubtedly would have been entitled had it first sought a lifting of stay from bankruptcy court).

In considering Mr. Felder's claim that he was injured by the actions of AGF, the Court

cannot ignore the security interest held by AGF in the unearned premium as a result of the pre-petition assignment. Having determined that Mr. Felder did not alter AGF's *in rem* rights in the unearned premium refund, Mr. Felder has not established that he was injured by his inability to obtain that refund and use it to fund his Chapter 13 plan. Even if, as Mr. Felder suggests, he could have used the unearned premium refund to fund his payments to AGF over time, AGF still would have been entitled to retain its lien on the unearned premium and to be paid the equivalent of the full value of its secured claim, which is equal to the entire amount of the unearned premium. 11 U.S.C. § 1325(a)(5)(B). Thus, Mr. Felder has not been injured by AGF being paid the full value of its secured claim in the unearned premium because that is precisely the sum to which it would have been entitled had its secured claim been addressed in Mr. Felder's Chapter 13 plan. To hold otherwise would eliminate AGF's lien contrary to the Bankruptcy Code and established Fourth Circuit precedent.

C. Retention of the Unearned Premium

Mr. Felder also asserts that AGF violated § 362(a)(3) by "unilaterally" exercising control over the unearned premium refund, which he claims is "property of the estate." In the absence of recoupment, this Court believes that while retention of an unearned premium may constitute a stay violation under § 362(a)(6) and (7), it does not violate § 362(a)(3) in this case because the unearned premium is not property of Mr. Felder or his bankruptcy estate.

In contrast to rights under the Credit Insurance that Mr. Felder had not assigned to AGF, the unearned premium is not property of Mr. Felder or his bankruptcy estate because it was assigned to AGF pre-petition and thus was not subject to § 362(a)(3).[6] The express

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[6]Mr. Felder fails to appreciated that certain of his rights in the insurance, namely the unearned premium and any proceeds under the policy up to the outstanding debt , were assigned to AGF. Those rights that were assigned are not property of Mr. Felder's estate. Neither the unearned premium nor the proceeds would be available to Mr. Felder's other creditors unless the debt to AGF had been paid in full at the time Mr. Felder filed his bankruptcy petition. Under these

language of the assignment unequivocally contemplates a present assignment of any return of unearned premiums. Exhibit C to Harrell Aff. ("Mortgagors...hereby assign to Mortgagee any...return on unearned premiums...." *Id.*).

Unearned premiums come into existence immediately upon funding of a policy, not when the policy is canceled. *In re RBS Indus., Inc.*, 67 B.R. 946, 951 (Bankr. D. Conn. 1986). "At the first moment the policy takes effect, the entire premium is unearned. On each day thereafter the unearned portion of the premium is reduced and the earned portion is proportionately increased, so that on any given date, the unearned premium may be computed." *Id.* Thus, Mr. Felder had a present interest in the unearned premium, from the time the premium was paid to the Insurer, to which AGF's security interest could and did attach immediately.

The "[i]n the event of default" language in the Security Agreement relates only to cancellation of the Credit Insurance and merely sets forth the procedural device intended by the parties to provide AGF with recourse to the collateral securing its loan. *See RBS Indus.*, 67 B.R. at 951. In any event, it is now beyond dispute that Mr. Felder was delinquent in his payments to AGF by nearly 60 days at the time he filed his bankruptcy petition. Thus he was in default.[7] Accordingly, under any interpretation of the assignment provision, the assignment became effective pre-petition.

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circumstances, courts recognize that the assigned insurance proceeds are not property of the debtor's bankruptcy estate because they neither enhance nor decrease the estate. See In re Goodenow, 157 B.R. 724, 725-26 (Bankr. D. Me. 1993); *accord Matter of Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993); *First Fidelity Bank of McAteer*, 985 F.2d 114 (3d Cir. 1993); *In re Louisiana World Exposition, Inc.*, 832 F.2d 1391, 1399 (5th Cir. 1987).

[7]Contrary to Mr. Felder's argument, Mr. Felder was not entitled to notice and an opportunity to cure before AGF's enforcement of its lien in the unearned premium under S.C. Code Ann. § 37-5-111. The lien of AGF was not a "security interest *in goods*" within the purview of the statute. Moreover, exercise of AGF's lien rights was not predicated upon acceleration of Mr. Felder's loan. Thus, the statute has no application here.

Because Mr. Felder's indebtedness to AGF for the premium advance exceeded the amount of the unearned premium that served as security for repayment of the advance at the time of his bankruptcy petition, the unearned premium is not property of Mr. Felder or of his bankruptcy estate. *In re Remcor, Inc.*, 186 B.R. 629, 636-37 (Bankr. W.D. Penn. 1995). Upon filing a bankruptcy petition, a borrower's bankruptcy estate has the same rights under an insurance policy that the borrower had pre-petition. *See Goodenow*, 157 B.R. at 725 (bankruptcy "estate's legal and equitable interests in property rise no higher than those of the debtor" (quoting *In re Gagnon*, 26 B.R. 926, 928 (Bankr. M.D. Pa. 1983))). Thus, if a debtor had no right to receive or exercise control over proceeds of an insurance policy pre-petition, then the debtor's estate would not have any right to receive or exercise control over the proceeds post-petition.

The creditor/assignee also retains post-petition whatever rights it has to payment of the insurance proceeds under the terms of the policy upon the occurrence of an event triggering coverage. This is true regardless of whether the debtor's personal liability on the debt has been discharged or otherwise is altered through confirmation of a Chapter 13 plan. *See* Lee R. Russ & Thomas F. Segalia, 3 *Couch on Insurance* § 43:21 (3d ed. 1997) ("The discharge affects the remedy by creating a personal defense, but does not cut off the obligation out of which the insurable interest arises." *Id.*)

Applying these principles, the court in *In re Goodenow*, 157 B.R. at 726, held that the proceeds of a debtor's credit disability policy were not property of the debtor's Chapter 13 estate where the creditor was the primary beneficiary under the policy, the debtor's estate had rights in the proceeds as the secondary beneficiary only after the debt to the creditor had been fully paid, and the proceeds payable under the policy were less than the outstanding debt. "It is clear that the Debtor could exert no control over the proceeds before bankruptcy and

consequently had no ownership interest therein. Therefore, despite the estate's interest in the Insurance Policy, the proceeds do not constitute property of the Debtor's Chapter 13 estate." *Id.*; *accord Johnson v. USAir Fed. Credit Union (In re Johnson)*, 162 B.R. 464, 465-66 (Bankr. M.D.N.C. 1993) (where debtor had assigned proceeds of credit disability policy pre-petition, bankruptcy petition did not create new rights in debtor and proceeds, therefore, were not property of debtor's estate).

Similarly, in a series of orders recently entered by the Chief Judge of the United States Bankruptcy Court for the Middle District of Pennsylvania, the Court concluded that unearned credit insurance premiums were not property of the debtors' bankruptcy estates in cases involving claims and assignment provisions nearly identical to those involved in the claim of Mr. Felder. The Court determined that because the debtors in those cases had assigned their rights in the unearned premium to their respective creditors pre-petition and because there remained debts owing to the creditors for which the unearned premiums continued to serve as security, the unearned premiums never became property of the debtors' estates and the creditors properly retained and applied the premium refunds to the debtors' loans. *See In re Baker*, Case No. 1-98-01532, Adv. Pro. No. 1-98-00099A (Bankr. M.D. Pa. March 28, 2000); *In re Burke*, Case No. 1-98-00877, Adv. Pro. No. 1-98-00100A (Bankr. M.D. Pa. March 28, 2000).

This Court is persuaded by the analysis of the courts in *Goodenow, Remcor, Baker* and *Burke*. The unearned premium refund never would have been available to Mr. Felder or the creditors of his estate. Because the debt owed to AGF exceeded the amount of the unearned premium securing the debt, Mr. Felder had no right to recover any unearned premium. Thus, that unearned premium was not property of Mr. Felder or his estate at the time his petition was filed.

Mr. Felder had no right to exercise control over the unearned premium refund pre- or post-petition. Mr. Felder had irrevocably appointed AGF as his attorney-in-fact with full authority to cancel the policy, to receive all sums resulting therefrom and to "credit any premium refund received against [Mr. Felder's] unpaid indebtedness." Moreover, the mere fact that Mr. Felder may have been able to cancel the Credit Insurance does not mean that he had any interest in or control over the premium refund because under the terms of the Master Insurance Policy, any unearned premium refund was to be paid to AGF and applied to Mr. Felder's indebtedness to AGF, regardless of whether Mr. Felder cancelled the policy or AGF cancelled it. Exhibit F to Harrell Aff. at 4. Thus, in no event would Mr. Felder have obtained the unearned premium refund so long as his indebtedness to AGF exceeded the amount of the refund.

In sum, Mr. Felder already had relinquished all control over the unearned premium pre-petition, and the unearned premium accordingly was not property of Mr. Felder's bankruptcy estate. Even assuming that AGF violated § 362(a), because Mr. Felder suffered no injury, he does not have a claim under § 362(h).

This Court declines to rule on the issue of recoupment. Having ruled that the unearned premium was not property of the debtor's estate and that Mr. Felder was not injured in a statutory sense because neither he nor other creditors would have had a right to this unearned premium, it is not necessary for this Court to address whether or not the strict requirements of recoupment have been met. A ruling on this issue favorable to either Mr. Felder or AGF would not change the outcome of this Order.

Conclusion

While this Court believes that cancellation of the insurance policy was a violation of § 362(a) and even if retention of the unearned premium by AGF was also a violation of

§ 362(a), such violations are not compensable in the absence of injury. Mr. Felder sustained no injury as required by § 362(h). Because cancellation of the insurance policy was a void act, taken in violation of the stay and ineffective under state law, if Mr. Felder had sustained a property casualty loss, AGF would have been responsible for insurance coverage. However, there was no casualty loss during the original policy period.

The unearned premium did not belong to Mr. Felder because he had assigned it absolutely to AGF under the security agreement on the date of the loan. However, under the security agreement, AGF could not apply it to the balance of Mr. Felder's indebtedness until the policy was cancelled and the policy could not be cancelled until Mr. Felder was in default. In addition, because Mr. Felder was in bankruptcy, the policy could not be cancelled until the stay was lifted.

Although Mr. Felder was in default pre-petition, the stay was never lifted and the policy was never legally cancelled. AGF took the unearned premium assigned to it and reduced the loan balance. *While its act of cancellation violates state law, such violation is not* before this Court to adjudicate. While AGF should have moved to lift the automatic stay before cancelling the insurance and possibly before retaining the unearned premium, the unearned premium was not property of the estate and would not have been available to Mr. Felder or other creditors. The failure of AGF to lift the stay gives Mr. Felder no greater right to, or use of, the unearned premium than he otherwise would have had. There is no "strict liability" for a stay violation, with injury or damages presumed. Mr. Felder was not injured by AGF's retention of the unearned premium.

The automatic stay and actions for willful violations are unique to the Bankruptcy Code. The Code requires injury in fact from a violation; not injury per se as a result. Such actual injury is lacking in Mr. Felder's case.

liability" for a stay violation, with injury or damages presumed. Mr. Felder was not injured by AGF's retention of the unearned premium.

The automatic stay and actions for willful violations are unique to the Bankruptcy Code. The Code requires injury in fact from a violation; not injury per se as a result. Such actual injury is lacking in Mr. Felder's case.

This decision should not be viewed as a "green light" for secured creditors to apply held collateral to reduce a loan balance (short of recoupment) without first lifting the automatic stay. This case is unique and unusual because the absolute assignment feature in the security agreement left Mr. Felder with no rights to the unearned premium and, therefore, he was not injured. Therefore, It is

ORDERED, ADJUDGED AND DECREED, that AGF's Cross-motion for Summary Judgment is granted and Mr. Felder's Motion for Summary Judgment is denied. Accordingly, this adversary proceeding is hereby dismissed, with prejudice, as between American General Finance, Inc. and William Felder. It is

FURTHER ORDERED, ADJUDGED AND DECREED that this Court has reconsidered its Memorandum Opinion and Order certifying a class, entered February 16, 2000. Upon reconsideration, this Court hereby de-certifies the class and vacates the prior Class Certification Order. Thus, this adversary proceeding shall be and hereby is dismissed as between American General Finance, Inc. and William Felder.

Wm. Thurmond Bishop
Judge

Columbia, South Carolina

This 7th day of July, 2000.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

BNC'd

JUL 7 2008

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

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Deputy Clerk

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